

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
LEE FERNANDEZ	:	DETERMINATION
for Redetermination of a Deficiency or for	:	
Refund of New York State and New York City	:	
Personal Income Taxes under Article 22 of the	:	
Tax Law and Chapter 46, Title T of the	:	
Administrative Code of the City of New York	:	
for the Year 1981.	:	

Petitioner, Lee Fernandez, 92-25 220th Street, Queens Village, New York 11428, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the year 1981 (File No. 802088).

A hearing was held before Nigel G. Wright, Administrative Law Judge, at the offices of the Division of Tax Appeals, Two World Trade Center, New York, New York, on December 6, 1988 at 9:30 A.M. Petitioner appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUES

I. Whether a donation to the Life Science Church is deductible from income under section 170 of the Internal Revenue Code.

II. Whether a negligence penalty under Tax Law § 685(b) is proper for the taking of such a deduction.

FINDINGS OF FACT

1. (a) A Notice of Deficiency for New York State and New York City personal income tax was mailed on April 5, 1985 and is in the amount of \$333.38, plus interest of \$119.66 and a penalty for negligence under Tax Law § 685(b) of \$16.67, for a total of \$469.71. The State's share of this total was \$333.58 and the City's \$126.43.

(b) The deficiency is based on a disallowance of a claimed deduction of \$4,100.00 the "Life Science Church".

2. Petitioner in 1981 resided in Brooklyn. She was a secretary for the City of New York Board of Education.

3. Petitioner first attended meetings of the Life Science Church with a friend. She described two meetings, both of which were devoted to lectures on the necessity for tax reduction. She described no other meetings and apparently attended no other meetings.

4. On November 9, 1981, petitioner gave a check of \$4,100.00 to the Life Science Church. She received a receipt for this amount from a Reverend Ranucci on November 10, 1981.

CONCLUSIONS OF LAW

A. The charitable deduction cannot be granted. The petitioner has the burden of proof that the contributions made were to an organization which qualifies for deductible contributions (Van Dyke v. Commr., 45 TCM 1233, 1236). A charitable deduction for a resident individual's New York tax, as an itemized deduction, is based on that individual's Federal itemized deductions (Tax Law § 615[a]).

A Federal charitable deduction can be taken only for amounts meeting the conditions of section 170 of the Internal Revenue Code. Permitted contributions under IRC § 170(c) include those:

"to or for the use of (2) a corporation...

(B) organized and operated exclusively for religious, charitable...or educational purposes...

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(D) which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation...."

Petitioner here has not come forward with any documents to show the organization of the Life Science Church. She has not shown that its activities were exclusively for exempt purposes nor shown that the Church's expenditures are not for private purposes. In particular, she has not shown that the Church is not disqualified by reason of activities in attempting to influence legislation.

It would appear that the Life Science Church would be disqualified for tax exemption by reason of "attempting to influence legislation". The change or reform of tax laws necessarily involves legislation and is not a tax exempt activity (Rev Rul 62-71 1962-1 Cum Bill 85; Roberts Dairy Company v. Commr., 195 F2d 948).

B. The penalty for negligence will be upheld. Petitioner has the burden of proof on this

issue also (Van Dyke v. Commr., 45 TCM 1233, 1236). Apparently, petitioner relied for tax advice on friends associated with the Life Science Church. She has shown no attempt to obtain more qualified advice.

C. The petition is denied. The deficiency is due.

DATED: Albany, New York

ADMINISTRATIVE LAW JUDGE